3008.

SUPREME COURT OF THE UNITED STATES.

No. 196—'7.

JUAN BAUTISTA JECKER, LUIS JECKER, THOMAS DE LA TORRE, GEIDERO DE LA TORRE, AND JOSE E. FERNANDEZ, MERCHANTS, TRADING UNDER THE NAME AND STYLE OF JECKER, TORRE & CO., APPELLANTS,

vs.

JOHN B. MONTGOMERY.

AND

JOHN B. MONTGOMERY, APPELLANT,

vs.

JUAN BAUTISTA JECKER, LUIS JECKER, THOMAS DE LA TORRE, GEIDERO DE LA TORRE, AND JOSE E. FERNANDEZ, MERCHANTS, TRADING UNDER THE NAME AND STYLE OF JECKER, TORRE & CO.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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Style of court.

DISTRICT OF COLUMBIA, *sct.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-fifth day of the same month, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fourth, were present, William Cranch, chief judge; the honorable James S. Morsell, James Dunlap, associate judges; Richard Wallach, esq., marshal; John A. Smith, clerk.

In the record of proceedings of the said court, amongst others were the following, to wit:

Parties.

JOHN B. MONTGOMERY, appellant,
vs.
JECKER, TORRE & Co., appellees.

Appeal from the district court.

Be it remembered, that heretofore, to wit, at the October term, 1849, of the circuit court of the District of Columbia, for the county of Washington, the said appellant, by Reverdy Johnson and Philip Barton Key, esquires, his attorneys, filed in court here a certain record from the district court of the United States for the District of Columbia, in the words and of the tenor following, to wit:

Record from district court.

DISTRICT OF COLUMBIA, *to wit.*

At a session of the district court of the United States, for the District of Columbia, continued and held by adjournment at the court-room in the city of Washington, on Wednesday, the 13th day of June, in the year of our Lord one thousand eight hundred and forty-nine, were present, the honorable William Cranch, judge; Philip Barton Key, esq., district attorney; Robert Wallace, esq., marshal; John A. Smith, clerk.

In the minutes of the proceedings of the said court, amongst others are the following, to wit:

Parties.

JUAN BAUTISTA JECKER, Luis Jecker, et al., trading as Jecker, Torre & Co., libellants,
vs.
JOHN B. MONTGOMERY, commanding the United States ship Portsmouth, respondent.

Be it remembered, that heretofore, to wit, on the sixth day of June, in the year of our Lord one thousand eight hundred and forty-eight,

the said libellants, by Richard S. Coxe, esq., their proctor, filed in court here the following libel in the words and of the tenor following, to wit:

Libel.

To the honorable William Cranch, judge of the district court of the United States, for the District of Columbia.

The libel of Juan Bautista Jecker, Luis Jecker, Thomas de la Torre, Geidero de la Torre, and Jose E. Fernandez, merchants, trading under the name and style of Jecker, Torre & Co., respectfully showeth:

That in or about the month of October, in the year of our Lord one thousand eight hundred and forty-six, there was shipped on board the American ship Admittance, Peter Peterson, master, at the port of New Orleans, in the United States, a large and valuable cargo, consisting of cotton, paper, iron, and other articles. The said articles having been purchased by order of Messrs. Rabie, Brothers & Co., subjects of the Queen of Spain, the bills of lading were made out in their name, and were subsequently endorsed and transferred to your libellants, whereby the said property became vested in them.

And your libellants further shew, that the said ship Admittance, with her cargo as aforesaid, were regularly cleared in the said port of New Orleans for Honolulu, in the Sandwich Islands, in the Pacific ocean. The ultimate destination of the said cargo, owned by your libellants, was the port of San Blas, in the republic of Mexico, provided it should happen, as was generally and confidently expected, that prior to the arrival of said ship and her cargo in the Pacific, hostilities should have terminated and peace been restored between the United States and Mexico. In the contingency that the war then existing between the said powers should not then have terminated, or that the port of San Blas should not be found in the possession of the forces of the United States, said ship, with her aforesaid cargo, was directed to proceed to Honolulu. And the libellants further aver, that the said ship was bona fide the property of citizens of the United States; that her captain, officers, and crew, were citizens of the United States; and that she had on board every document and paper required by the laws of the United States to establish and prove her national character. That your libellants were subjects of foreign nations at peace and in amity with the United States and Mexico, part of them being subjects at the time of the Queen of Spain, and the residue of France. That the voyage in which said vessel was engaged was a lawful voyage throughout, and that neither her officers nor crew, nor the owners and agents of the said cargo, did any act, or entertain any design, contrary to, or in violation of, the laws of nations, or of the United States.

And your libellants further shew, that on the arrival of the said ship off the port of San Blas, Captain Peterson ascertained that the war

between the United States and Mexico still continued; that said port was not in the possession of the American forces, nor was it in a state of blockade. He learned further that a part, if not the whole, of California had been subjugated by the forces of the United States, and that an arrangement had been made by the competent authorities under which the said ship and her cargo might lawfully proceed to some port in California, there to await the instructions of the consignees. Reposing implicit confidence in these representations, the Admittance proceeded to one or more ports in California, and conferred with the agents of the libellants, American merchants there resident.

And further your libellants shew, that in the prosecution of her said lawful voyage the said ship and cargo arrived at the port of San Jose, in California, one of the ports which under the said arrangement was deemed and held to be neutral between the two belligerents. That the United States sloop of war Portsmouth, John B. Montgomery, commander, lay at anchor in said port, and the Admittance lay along side of her; that the most friendly and unreserved intercourse took place between said Captain Montgomery and Peterson.

And your libellants further shew, that after said intercourse had so continued for about eight days, the said John B. Montgomery, so as aforesaid commanding the said United States ship Portsmouth, with an armed force, against the will of the said Captain Peterson, and of the owners and agents of the cargo so as aforesaid on board of her, without any lawful cause or probable cause of suspicion, seized and took possession of said ship Admittance, her cargo and papers; deprived the said Captain Peterson, his officers and crew, of the possession, control, management, and direction thereof, and put on board an armed force to maintain and keep said possession so wrongfully and illegally obtained.

And your libellants further shew, that said John B. Montgomery gave out and pretended that said vessel and her cargo, so by him seized, captured, and taken possession of, as a prize of war. Whereas your libellants do expressly aver that neither ship nor cargo were justly and lawfully subject thereto, and had done no act and omitted no duty to warrant and justify said seizure. And they further aver that if any just cause of capture existed, or any probable cause therefor, it was the bounden duty of the said John B. Montgomery forthwith, and without any unnecessary delay, to carry or to send said vessel and cargo to some port of the United States, and within the jurisdiction of some court of the United States, which might lawfully entertain and adjudicate upon said question of prize, and the lawfulness of said capture; and it was also his duty to transmit to said court all said ship's papers and documents so found on board her, and to institute proceedings before said court without any unnecessary delay, and prosecute the same to final sentence and decree upon the averment and allegation of prize. But your libellants shew and aver, that so far as they have been informed and believe, [neither] said vessel and cargo, nor were either of them, ever carried or sent into any port of the United States by the said John B. Montgomery, nor brought or sent within the jurisdiction competent

under the laws of the United States to adjudicate upon said question of prize, nor were the papers of the said ship or cargo ever by him transmitted to any such judicial tribunal. And your libellants further aver and shew, that in contempt and neglect and violation of law and duty in the premises, the said John B. Montgomery has for more than a year retained, held, and kept by himself, or those acting under his authority, order, and command, and out of and beyond the jurisdiction of any court of the United States. Whereby your libellants have for more than a twelvemonth been deprived of the use, possession, management, and control, of their said property; nor have they, from the same unwarrantable conduct of the said Montgomery, been enabled during all that time to institute proceedings against him before any court having competent jurisdiction to obtain either restitution of their property thus wrongfully and illegally taken and held, or damages and compensation for such his illegal and wrongful acts in the premises.

And your libellants aver that by reason of the illegal and wrongful acts and proceedings in the premises, they have sustained damage to the amount of one hundred and fifty thousand dollars; and they further aver, that the said John B. Montgomery is now personally within the district aforesaid, and within the jurisdiction of your honorable court.

Inasmuch, therefore, as the said seizure and detention of the said property of the libellants are manifestly unjust and contrary to the laws of nations and of the United States, as are also the subsequent acts, doings, commissions, and omissions, of the said John B. Montgomery, his agents and servants, in retaining possession thereof, and depriving said Captain Peterson of his possession, control, and authority over the same, in seizing, holding, and retaining said property with the documents and papers appertaining thereto, beyond and out of the jurisdiction of the United States, or any court thereof, and in omitting and neglecting to institute proceedings in some appropriate tribunal having cognizance of such matters; your libellants humbly pray that by the sentence and decree of this honorable court, the said John B. Montgomery may be ordered, directed, and compelled to restore said property to your libellants, and to make full compensation and satisfaction to them for the damages, expenses, and costs by them sustained from and by reason of the premises. For which reason and purpose your libellants humbly pray process of monition and attachment against the said John B. Montgomery, and that he may be compelled to answer this libel under oath.

RICH'D S. COXE,
Proctor for libellants.

Order for monition and attachment.

Thereupon the honorable judge made the following order, to wit:

Upon filing this libel let the monition and attachment issue as prayed, returnable on the first Monday of December next, at 10 o'clock, a. m.

W. CRANCH.

6th June, 1848.

Whereupon monition issued, directed to the marshal of the District of Columbia, and returnable the first Monday of December next, in the words and of the tenor following, to wit:

Monition and attachment.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the marshal of the District of Columbia, greeting:

Whereas, Juan Bautista Jecker, Luis Jecker, Thomas de la Torre, Geidero de la Torre, and Jose E. Fernandez, merchants, trading under the name of Jecker, Torre & Co., have exhibited their libel in the district court of the United States, for the District of Columbia, stating, alleging, and propounding, that a certain John B. Montgomery, then commanding the United States ship Portsmouth, from the day of in the year 1847, on the high seas, to wit, at the port of San Jose, in California, with an armed force, and without any lawful authority or probable cause or suspicion, seized and took possession of a certain ship called the Admittance, her cargo and papers, and forcibly kept and detained them, and still forcibly keeps and detains the said ship, her cargo, and papers, to the damage of the said libellants one hundred and fifty thousand dollars; and further stating, alleging, and propounding, as in and by the said libel, filed in the said district court, at large appears.

And whereas the judge of the said district court hath ordered and directed the first Monday in December for the said John B. Montgomery to be cited and intimated to appear at 10 o'clock, a. m., at the court-room, in the city of Washington, before the said court, to shew cause, if any he have, why judgment should not be passed as prayed.

You are therefore hereby authorized, empowered, and strictly enjoined, peremptorily to cite and admonish the said John B. Montgomery, libelled against as aforesaid, by showing this monitor to the said John B. Montgomery, and leaving with him a true copy thereof, to be and appear before the judge aforesaid, at the time and place aforesaid; and also to attend upon every session and sessions, to be held then and there, until a definitive sentence shall be read and promulgated in the business inclusively; to hear, abide by, and perform all and singular such judicial acts as are necessary and by law required to be done and expedited in the premises; and further to do and receive what unto law and practice shall appertain, under the pain of the law and contempt thereof.

And whatsoever you shall do in the premises, you shall certify unto the judge aforesaid, at the time and place aforesaid, together with these presents.

Witness the honorable William Cranch, judge of our said district court, this sixth day of June, anno domini 1848.

WM. BRENT, *Cl'k.*

December, 1848.

And now, at this day, to wit, the said first Monday of December, in the year of our Lord one thousand eight hundred and forty-eight, and the day of the return of the foregoing monition and attachment, come into the district court here the said libellants, by their proctor aforesaid; and the marshal of the District aforesaid, to whom the said aforegoing monition and attachment were in form aforesaid directed, makes return thereof to the court here in form following, to wit:

Marshal's return.

I hereby certify to the honorable the district court of the United States, for the District of Columbia, that in virtue of the within monition and attachment, I have cited and admonished the said John B. Montgomery to be and appear before the honorable the judge of the district court of the United States, for the District of Columbia, at the court-room in the City Hall, in the city of Washington, on the first Monday in December next, and to attend upon every session or sessions, to be then and there held, until a definitive sentence shall be read and promulgated in the business; to hear, abide by, and perform all such judicial acts as are necessary and by law requisite to be done in the premises; and to do and receive what unto law and justice shall appertain, under pain of the law and contempt thereof, as by the within monition I am directed.

A. HUNTER, *Marshal, D. C.*

Whereupon the said respondent, John B. Montgomery, appears in court here by Philip Barton Key, esquire, his proctor; and thereupon, on motion of the said libellants, by their proctor aforesaid, it is ordered by the court here, that the said respondent answer to the libel aforesaid of the said libellants, filed in this cause; whereupon, by consent of the parties by their proctors aforesaid, the said cause was regularly continued until Monday, the 12th day of February, 1849; when the said respondent, by his proctor aforesaid, filed in court here his answer to the libel aforesaid, in form following, to wit:]

Answer of respondent.

To the honorable William Cranch, judge of the district court of the United States, for the District of Columbia; the answer of John B. Montgomery to the libel of Jean Bautista Jecker, Luis Jecker, Tomas de la Torre, Guidero de la Torre, and Jose E. Fernandez, merchants, trading under the name and style of Jecker, Torre & Co., most respectfully sheweth, that this respondent, saving to himself all and all manner of advantage to the manifest uncertainties and insufficiencies in the libellant's said libel contained, for answer thereto, or so much thereof as is material and necessary to be answered, answers and says, that he is a commander in the navy of the United States; that at the time and

place stated in libellants' said libel, he was the commander of the United States ship Portsmouth, and that on the seventh day of April, in the year one thousand eight hundred and forty-seven, at the port of San José, in Lower California, he did seize and take as lawful prize a certain ship or vessel, called the "Admittance," with her cargo, provisions, tackle, and all other appurtenances to the said ship belonging; that the said ship "Admittance" was a merchant vessel belonging to citizens of the United States. That on the day of said seizure, to wit, on the 7th day of April, 1847, and for some time before that date, and for some time before the sailing of the said ship "Admittance" from the port of New Orleans, open and public war existed between the United States of America and the republic of Mexico, and the dependencies thereof; and in pursuance of said state of war, and in accordance with his duty, the said ship "Admittance," by this respondent, commander as aforesaid, was seized.

This respondent avers and answers, that he justifies said seizure, for the reason that the said ship "Admittance," one Peter Peterson being the master of said ship, sailed from the port of New Orleans, in the United States of America, with a valuable cargo of goods, at the time of said sailing and clearance, he, the said Peter Peterson, well knew that a state of war existed between the United States of America and the republic of Mexico and its dependencies; that the said Peter Peterson, at the time of sailing and thereafter, designed and intended to proceed to the west coast of Mexico, and discharge said cargo at a port or ports of the enemy on the Pacific coast of the said republic and its dependencies, to wit, at the port of San Blas; that the said Peter Peterson, master as aforesaid, proceeded with the said ship and cargo to the Pacific coast of the said republic, within the jurisdiction of the said republic, and whilst there he, the said Peter Peterson, then well knowing that war still existed between the United States and the said republic of Mexico, held illegal intercourse with the enemies of the United States, received and answered written communications from the same; observed and answered private signals; openly declared his intention to discharge his cargo at the said port of San Blas, or at some other port or place in the enemies' dominions, said port or place being then in the possession of the enemy, and he, the said Peterson, well knowing the same; and further, that the said Peter Peterson, at the port of San José, a Mexican port, and then in the possession of the enemy, and he, the said Peterson, then well knowing the same, did in fact order and direct to be discharged, and did in fact deliver and discharge, at and into the said port, sundry boxes and bales of goods from the said ship "Admittance," he, the said Peterson, well knowing at the time that war existed between the United States of America and the Mexican republic.

And so this respondent charges, that the said Peter Peterson, master of the ship "Admittance" as aforesaid, did sail from the United States of America with the intention of trading, and did in fact trade, and oth-

erwise held illegal communication with the enemy of the United States, in direct and open violation of the laws of the United States, and by which illegal act of the said Peterson the said ship "Admittance," together with her cargo, tackle, and appurtenances, became and was the subject of lawful prize; all of which said acts and doings of the said Peterson, master as aforesaid, more fully appears by the papers of the said ship "Admittance, and other papers received by this respondent from the said Peterson, and hereto annexed, marked exhibits from No. 1 to 15 inclusive, (copied in page ;) which this respondent prays may be made and considered as part of this his answer, and which also more fully appears by the deposition of William Bell, the first mate of the said ship "Admittance," which deposition is now on file in this honorable court, and to which this respondent makes most respectfully particular reference; (copied in page ;) and which also more fully appears by the log-book of the said ship "Admittance," which this respondent also prays may be made a part of this his answer.

This respondent further answers and states, that it was impossible for him, consistently with the public interests committed to his direction, to have sent the said ship Admittance from San José to any port in the United States; but that the ship was carried into the port of Monterey, where a libel was filed by this respondent in the "United States court of admiralty for California," on the 1st day of June, 1847, or thereabouts. That shortly thereafter the case came to a hearing, and the said Peter Peterson appeared in behalf of the said ship "Admittance," and that the said court condemned the said ship "Admittance" and her cargo as lawful prize. A copy of the proceedings of said court are herewith annexed, and this respondent prays that they may be made a part of this answer. This respondent believed, and does yet believe, that the said court was legally and constitutionally established, and had jurisdiction of the matter set out in respondent's said libel; and he pleads the decree aforesaid, and all the proceedings on which it was made, in bar of this libel.

Wherefore this respondent humbly prays that the libel of the said Jecker, Torre & Co., may be dismissed, &c., &c.

REVERDY JOHNSON,
P. B. KEY,
Respondent's counsel.

On this 28th day of December, in the year 1848, personally appeared before me, a justice of the peace, John B. Montgomery, and made oath according to law, that the matters and things herein stated are to the best of his knowledge and belief correct and true.

H. NAYLOR. *J. P.*

Deposition of William Bell, referred to in the foregoing answer of respondent.

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Deposition of Wm. Bell.

JECKER, TORRE & Co.,
vs.
JOHN B. MONTGOMERY.

District court of the United States, for the District of Columbia.

SIR: You are hereby notified that the deposition of William Bell will be taken de bene esse before me, at the mayor's office, in Washington city, in the District of Columbia, at 6 o'clock in the afternoon of Thursday, the 17th of August, as a witness for the above defendant in the above entitled cause, according to the act of Congress in such case made and provided, at which time and place you are entitled by law to be present, and to put interrogatories to the said witness.

Dated this 16th day of August, 1848, at Washington city, in the District of Columbia. W. W. SEATON, *Mayor*.

To RICHARD S. COXE, esq.,
Attorney for the plaintiffs.

Service acknowledged, August 16, 1848.
R. S. COXE, *for Libellants*.

Interrogatory 1. Where is your place of residence, and what is your business?

Interrogatory 2. Is it or is not your intention to go out of the United States, and if so, how soon?

Interrogatory 3. Were you ever employed on board the ship Admittance; if so, when and long, and in what capacity?

Interrogatory 4. Have you any interest in the ship Admittance, directly or indirectly?

Interrogatory 5. What ports did the ship Admittance touch at after leaving the United States?

Interrogatory 6. When you were at Valparaiso, did you hear of the continuance of the war between Mexico and the United States; did Capt. Peterson hear of it also?

Interrogatory 7. After leaving Valparaiso, do you know if Captain Peterson knew of the continuance of the war?

Interrogatory 8. Where did you ship for?

Interrogatory 9. After leaving Valparaiso, was there, or was there not, any deviation from the course to the Sandwich islands; if so, did you say any thing in relation to it, and what; and where was such deviation?

Interrogatory 10. Did you then know the captain's purpose in going to San Blas?

Interrogatory 11. Did you or did you not learn, upon arriving off San Blas, that the war was continuing between the United States and Mexico; if so, how?

Interrogatory 12. How long did you remain off San Blas?

Interrogatory 13. Had you or not any signal flag flying when off San Blas?

Interrogatory 14. Did you or not enter off San Blas under any national flag?

Interrogatory 15. How long did the canoe, spoken of in your answer to the eleventh interrogatory, remain alongside the ship?

Interrogatory 16. Do you or not know what kept the canoe there so long?

Interrogatory 17. Did you receive any other boats alongside of the Admittance, or did you not?

Interrogatory 18. How long did this second canoe remain alongside?

Interrogatory 19. Do you or do you not know what kept the canoe there so long?

Interrogatory 20. After the second boat left you, what did you do?

Interrogatory 21. Did you or did you not know where the cargo was to be discharged?

Interrogatory 22. Were you or not on the look-out for that place; by whose orders?

Interrogatory 23. Under what colors were you sailing along the coast from San Blas to Masanillio?

Interrogatory 24. Were you or not looking out for any signal to be displayed from the shore? If so, by whose order, and what kind of a signal?

Interrogatory 25. Did you or not land the cargo, as you were expecting; if not, why?

Interrogatory 26. How long were you running along the coast in this way?

Interrogatory 27. What did you then do?

Interrogatory 28. Did Captain P. give you any orders respecting the log book?

Interrogatory 29. Did he or not state any reason for reprimanding you in this way?

Interrogatory 30. Were you or not in want of wood or water on your arrival off San Blas?

Interrogatory 31. Was there or was there not any order given by the captain about that time, limiting the use of wood or water?

Interrogatory 32. Did or did not Captain Peterson make any attempt to obtain wood and water, or either, from the brig mentioned in your answer to the twentieth interrogatory, at any time while on the Mexican coast, before your arrival at San José?

Interrogatory 33. While lying off San Blas, or at any other time while on the Mexican coast, did or did not any boats leave the ship? If so, by whose order, and for what purpose?

Interrogatory 34. Where was this English frigate lying at this time?

Interrogatory 35. Under what colors, if any, did the Admittance enter San José?

Interrogatory 36. Was there or not any vessel of war lying off San José at this time?

Interrogatory 37. Did you or not know at the time, that San José was in the possession of the Mexicans?

Interrogatory 38. Was there or not any fear manifested by Captain Peterson, of an attack from the Mexicans, at this time or afterwards?

Interrogatory 39. While lying at San José, did you or not receive any goods or articles from any source? If so, whence, and what?

Interrogatory 40. Were or were not any articles landed from the Admittance, at San José, before the flag of the United States was hoisted at that place? If so, what, and by whose orders?

Interrogatory 41. Did Captain Peterson give you any orders respecting the entry of this circumstance in your log book?

Interrogatory 42. Do you know or not to whom these articles were delivered? If so, to whom?

Interrogatory 43. While lying at San José, did the captain live on shore?

Interrogatory 44. Do you know with whom the captain lived while on shore? If so, with whom did he live?

Interrogatory 45. How often did the captain come on board ship during this time?

Interrogatory 46. How long before the capture of San José by the United States had you been there?

Interrogatory 47. Did or did not Captain Peterson receive any other documents besides these brought by the canoes before spoken of, at any time before the seizure of the ship by the Portsmouth? If so, what documents, and from whom?

Interrogatory 48. Did any one come on board the Admittance to stay during the time you were at San José?

Interrogatory 49. Did you or not hear the people who came in the canoe, spoken of in your answer to the eleventh interrogatory, suggest any thing by way of friendly advice or caution to Captain Peterson? If so, what?

Interrogatory 50. Do you or not know of what nation these people were? If so, how do you know, and of what nation were they?

Interrogatory 51. Did or did not Captain Peterson apply to you for the log-book after the ship was seized?

Interrogatory 52. Who was the master of the ship Admittance at the time you shipped, and during the voyage, up to her seizure?

Interrogatory 53. Do you know whether Capt. Peterson was a native American or a naturalized citizen?

I, William W. Seaton, mayor of the city of Washington, in the District of Columbia, certify, that on the 17th day of August, 1848, and by adjournment from day to day, until the 21st of the same month, and on that day, before me personally appeared William Bell, of lawful age, a witness produced on the part of the defendant in a suit depending in the circuit court of the United States, for the District of Columbia, in which Jecker, Torre & Co., are complainants, and John B. Montgomery is defendant; and the said William Bell, being by me first carefully examined, and cautioned, and sworn to testify the whole truth and nothing but the truth, did, in answer to the several interrogatories hereto prefixed, depose as follows, viz:

To the first interrogatory the deponent answers as follows: New York; a mariner.

Answer to the 2d interrogatory. As soon as I can get employment.

Answer to the 3d. I shipped on board the Admittance, 2d of Sep., 1846, at New Orleans; I was on board the ship until she was condemned, the 6th day of July, 1847; I was first mate of the ship.

Answer to the 4th. None.

Answer to the 5th. Valparaiso; from there direct to San Blas; from San Blas down the coast, to look for a harbor to land the cargo at a place called Masanillio, but could not find it. From thence to San José, where the vessel was seized. We were at San Blas two days and three nights before we left for Masanillio, or about that time.

Answer to the 6th. I did; I was sick, and heard it from the doctor, who belonged to the New York volunteers. The crew on board generally knew it.

Answer to the 7th. Yes, I have reason to believe so, because he set the people to make a white flag, and repair an English ensign; and he told me himself he knew of the war between Mexico and the U. States. He also got powder and ball and guns ready.

Answer to 8th. I shipped for the Sandwich Islands.

Answer to 9th. On the 24th February, being latitude of 17° 36′, and longitude 108° 30′ west, having a fair wind to proceed to the Sandwich Islands, we tacked ship and stood in for the coast of Mexico. I asked Captain Peterson if he was going to San Blas; he told me he was. I asked him what he was going to do if there was war; he said he wanted to speak an American man-of-war, to know if there was war; and if there was, he would go to the Sandwich Islands, and lay there two months on demurrage; if it came peace in that time, he would go back to San Blas and land his cargo; and if not, he would discharge it at Honolulu.

Answer to 10th. No.

Answer to 11th. We did; the second day, off San Blas, a canoe came alongside and gave Captain Peterson a letter. The men in that canoe told every body that there was war.

Answer to 12th. Three days and two nights.

Answer to 13th. Yes, a white flag all the time flying at the fore, and no other colors at any time.

Answer to 14th. None.

Answer to 15th. About four hands.

Answer to 16th. Captain Peterson was writing.

Answer to 17th. The third day another canoe came alongside and brought Captain Peterson a letter.

Answer to 18th. About two hours.

Answer to 19th. Captain Peterson was writing.

Answer to 20th. We squared away and set the studding sails for down the coast in search of Massanillio. Captain Peterson ordered the carpenter to cover the name of the vessel "Admittance, of Boston," on the stern with canvass and paint it black, which was done; next day fell in with a brig, and we showed English colors; we did not try to speak her, but kept along. The captain told me to get blocks and slings ready to discharge the cargo, as he expected to discharge it in two days. I asked

him if there *was* any lighters there; he said he did not know, it was their business; they were to find lighters.

Answer to 21st. I don't know, except what the captain said.

Answer to 22d. We were, by orders of Captain Peterson.

Answer to 23d. None except the English flag was showed the brig; all the time we had a white flag at the fore, *which* we wore on the coast looking for Masanillio.

Answer to 24th. Yes; the captain's looking for a white flag; a man was stationed at the mast-head all the time with a spy-glass looking out for a white flag.

Answer to 25th. Did not; could not find the harbor.

Answer to 26th. About four days, I think.

Answer to 27th. We made sail; and the captain told me to head the log-book for San José.

Answer to 28th. He did. The day we left San Blas, he took my log-book and was reading it, and he reprimanded me for putting San Blas on it, and that canoes came alongside with letters. He asked me how I knew it was San Blas. I said I knew perfectly well. He said, suppose we fall in with an American man-of-war, and she overhauled that log-book, he dared not show these letters. He then told me, after two days' work was put down in the log-book to put down that we were looking for a place to get wood and water. He then told me to head the log-book for any place till he told me.

This answer applies also to the 29th interrogatory.

Answer to 30th. No; when we tacked ship to stand in for Mexico, we had plenty of wood and water on board to carry us to Honolulu.

Answer to 31st. None; no allowance; we used at the rate of a gallon and a half of water a day to a man.

Answer to 32d. He did not.

Answer to 33d. They did. The morning of the second day before the first canoe came off, being calm, he sent me in the boat with four men, and gave me two letters—one to the captain or commanding officer of the English frigate lying at San Blas, and one letter to be sent on shore; and he told me the letter to the commanding officer of the frigate would give them instructions what to do with the letter to be sent on shore. He then told me if he made a signal to come back. We pulled about four miles, when he made a signal and we returned to the ship, and I gave him back the letters. In about half an hour afterwards, the first canoe came alongside and gave him a letter.

Answer to 34th. In the harbor of San Blas.

Answer to 35th. We ran into San José with English colors, and before we dropped anchor we saw a white flag on shore, and we lowered the English flag, and hoisted an American flag.

Answer to 36th. None; there was not then, but the Portsmouth arrived nine days after.

Answer to 37th. I did. Afterwards I discovered that it was in possession of the Mexicans.

Answer to 38th. Afterwards, when the Portsmouth left, Captain Peterson sent me word off to get the guns loaded, and set a sea watch; he

expected lancheros over from Mazatlan to attack the vessel. We kept the sea watch and the guns loaded till the Portsmouth returned.

Answer to 39th. We received some oil casks and shooks out of a schooner; also some vegetables and beef from shore.

Answer to 40th. Yes; two large bales of printed calicoes, marked P. P.; 14 boxes of tobacco; two boxes of segars; three boxes of pipes.

Answer to 41st. He told me not to enter it on the log-book.

Answer to 42d. Part were delivered to a Mexican by me, according to the order of Captain Peterson; I don't know to whom the remainder were delivered.

Answer to 43d. He did, all the time, night and day.

Answer to 44th. With Mr. Mott.

Answer to 45th. He came on board sometimes in two and sometimes in three days.

Answer to 46th. Ten days.

Answer to 47th. I don't know.

Answer to 48th. No; the day before the Admittance was seized, Captain Peterson came on board and told me that his consignee had come over from Mexico; he told the steward, in my presence, that he would have a passenger on board this time, and he must live a little better.

Answer to 49th. Yes; the first canoe came alongside off San Blas; in coming under the ship's stern, and seeing the ship's name and Boston on it, he told the captain in broken English, "no good, he must black it out."

Answer to 50th. Mexicans, to the best of my knowledge, from their color and language.

Answer to 51st. He did; I told him it was on board the Portsmouth.

Answer to 52d. Capt. Peter Peterson.

Answer to 53d. A naturalized citizen; at least he is not a native citizen; I don't know whether he is naturalized or not.

Cross examination.

Richard S. Coxe, proctor and advocate of libellants, saving and reserving all exceptions to the competency and admissibility of the testimony of the witness, to be taken at the hearing of the case, nevertheless, by way of cross examination, proposed the following questions:

1. Are you a citizen of the United States; native born or naturalized?

2. When the Admittance sailed from New Orleans in September, 1846, what was the public opinion at that place in regard to the continuance of the war between the United States and Mexico; was it not generally expected that peace would soon take place?

3. Did the Admittance pursue a direct course from Valparaiso to San Blas, or did she, as she approached the Mexican coast, bear away and change her course and direction, and for what purpose?

4. Was there any vessel met and spoken before your arrival off San Blas; and if so, what questions were put, and what reply did you receive?

5. Was there any American man-of-war seen off the Mexican coast before your arrival at San José?

3616.

6. Was there any off San Blas or San José at your arrival off these places?

7. Did the Admittance come to anchor off San Blas; how far were you from the shore while off that port?

8. Is San Blas a secure harbor or an open roadstead?

9. Was there any force at San Blas to prevent Captain Peterson from landing his entire cargo had he been so disposed?

10. Do you know where Manzanillio is situated?

11. You have stated that when you sailed from San Blas, your studding-sails were set: in what direction was the wind?

12. How many passes are there from the port of San Blas, and which of them did the Admittance take?

13. How long did you carry studding sails, and how far south did you proceed along the coast, and how far down did you go?

14. Did you land any cargo, or anchor any where to the southward of San Blas?

15. Was there any American force to interfere with the landing of the cargo if it had been attempted?

16. Are there any island or islands off San Blas? And if so name them.

17. Did Captain Peters make any efforts to ascertain, at any island off the coast, *to* whether there was wood and water; if yea, at what island; what did he do, and what was his success?

18. In what direction did the ship head after leaving the Mexican coast, on your trip down that coast?

19. You say that you took on board some broken oil casks and heading from a schooner? What was the object, and what became of them?

20. On your arrival at San José was there any American man-of-war found there, or any spoken on the route?

21. On your arrival, was there any flag flying, and of what nation?

22. What man-of-war afterwards arrived while you were there?

23. At what day did you come to anchor at San José, and when did the Portsmouth arrive?

24. Did the Portsmouth remain at San José, or did she leave there while the Admittance was at anchor, and when did she return?

25. You have said you were on board the Admittance when she was seized. By whom was she seized; was she at anchor or under weigh at the time; what was done by the seizers with the ship, her cargo and crew?

26. Where is San José situated; is it not in California?

27. Had the Admittance been warned off the Mexican coast by any man-of-war before her seizure?

28. When did you leave the Admittance, and where did you go?

29. Has the Admittance ever been brought back to the United States?

30. Do you know from your own knowledge, or from Capt. Montgomery, where the Admittance now is?

31. How and when did you come to the United States?

32. Who paid your expenses to the United States?

33. When did you first see Capt. Montgomery since leaving California?

34. Did you know or hear, while in California, of any arrangement being made between the Mexican and American commanders in reference to the neutrality of that province?

35. Have you at any time prior to this occasion been examined upon this subject? If yea, state when and where; at whose instance; before what judge; and on what occasion.

36. On such examination in Monterey, did you state that, when you left San Blas to go down the coast, you went in search of Manzanillio?

37. Have you seen your former statement or deposition, or a copy of it since your return to the United States? If so, when and where, and in whose possession?

38. You have stated that, while at Valparaiso, you were informed of the continuance of the war by the Doctor. To what vessel was he attached, and from what port, and whither bound?

39. You have stated that Captain Peterson, while on shore at San José, lived with Mr. Mott. Do you know that gentleman; who is he; did he engage a passage on board the Admittance from San José to the Sandwich Islands?

40. From your situation as first mate on board the Admittance, you necessarily, I presume, were well acquainted with that ship, her papers, and cargo. If so, please state whether she was an American vessel; what her burthen, condition, and value; what was her cargo and value?

41. Do you know whether Captain Peterson went on board the Portsmouth shortly after the arrival of that vessel at San José, and what passed between him and Captain Montgomery.

Answer to the 1st cross interrogatory. I am a naturalized citizen; I was born in Scotland.

Answer to 2d. Do not know.

Answer to 3d. She went a direct course from Valparaiso to San Blas as the wind would allow, without changing her course, except as the wind required.

Answer to 4th. We spoke a bark the day we made the coast of Mexico, and asked if they knew whether there was peace or war. He replied, that he was from England, bound to California.

Answer to 5th. None.

Answer to 6th. None.

Answer to 7th. We did not come to anchor at San Blas; the nearest we were was four miles.

Answer to 8th. It is an open roadstead.

Answer to 9th. I was not on shore, and did not see any.

Answer to 10th. Not exactly; it is put down on the chart, but on so small a scale I could not tell where it lay; it is south of Cape Corientes.

Answer to 11th. To the northward and westward.

Answer to 12th. It is an open place, and no passes near; no islands near; there are the three Marias off the place.

Answer to 13th. I don't recollect; we carried studding-sails until we got to the windward of Cape Corientes, and went south about a degree and a half further.

Answer to 14th. No.

Answer to 15th. Not that I saw.

Answer to 16th. There are three islands off San Blas—the three Marias.

Answer to 17th. When we were bound to San José, we made the island of Sercorah on the passage, at a distance of seven or eight miles, but did not stop, and made no effort to examine it, or to get wood or water.

Answer to 18th. We had a head wind, and had to beat up.

Answer to 19th. I understood from the captain of that schooner that he was going over to the Mexican coast, and wanted Captain Peterson to keep them till he returned; in twelve days after the ship was seized, he came and got them again.

Answer to 20th. None.

Answer to 21st. There was no national flag, only a white flag flying on the beach.

Answer to 22d. The U. S. ship Portsmouth only.

Answer to 23d. I have forgot both dates; we were there nine days before the Portsmouth arrived.

Answer to 24th. She stopped there, I think, four or five days; then she went up to Cape San Lucas, and returned, I think, in two days after.

Answer to 25th. Capt. Peterson came on board from the Portsmouth, and ordered all men down from aloft, and then said to them, the ship is taken. She was at anchor about half a mile from the Portsmouth. Afterwards, Lieut. Revere came on board with the carpenter of the Portsmouth, and sealed up the hatches. The ship was sent up, under the command of Lieut. Revere, to Monterey, in Upper California, Captain Peterson remaining on board, and the crew doing duty as usual.

Answer to 26th. In the lower part of Lower California.

Answer to 27th. No.

Answer to 28th. I left her in Monterey, and went on shore after she was condemned, in July, 1847.

Answer to 29th. Not to my knowledge.

Answer to 30th. I do not. The last I knew of her, she was at Monterey, under charge of the U. S. officers.

Answer to 31st. I arrived the 24th June, 1848, in the U. S. store-ship Erie.

Answer to 32d. I came passenger by an order from Commander Shubrick, and paid no expenses.

Answer to 33d. In Boston, about a fortnight after my arrival.

Answer to 34th. I heard of none.

Answer to 35th. I was on shore at Monterey, before Judge Colton,

on the trial of the case of the seizure of the ship. I also gave a deposition in this same case at Charlestown, in Massachusetts, at the instance of Capt. Montgomery; before the mayor of the city.

Answer to 36th. I said, on that trial, that we went in search of a bay or harbor to land the cargo. Can't say whether I named Mazanillio.

Answer to 37th. I saw a copy of it in Charlestown, in possession of Captain Montgomery; only saw it; did not read it.

Answer to 38th. He was doctor of the New York volunteers, bound from New York to Upper California; don't remember the name of the ship.

Answer to 39th. I saw him once or twice; he came on board with Captain Peterson. He is an American; had been a sea captain, and was residing at that place, and doing business in Mexico with a Mr. Talbot.

Answer to 40th. She was an American vessel, her burthen 428 tons; she was an old ship. The people that owned her, when I was in her, gave $10,000 for her in Boston, as I was informed by Captain Peterson. Her cargo was raw cotton, iron, and paper; I don't know its value.

Answer to 41st. Captain Peterson and Mr. Mott went on board the Portsmouth, shortly after the Portsmouth arrived. I don't know what passed.

WILLIAM BELL.

And I, the said William W. Seaton, further certify, that the said testimony of the said William Bell was by him subscribed in my presence, after the same was by me, in his presence, reduced to writing; that I am not of counsel or attorney to either of said parties, nor interested in the event of said suit; that notice was given to the attorney of the adverse party, who attended and cross examined the said witness; his interrogatories and the answers of the said witness being hereto annexed, the said answers being written by me in the presence of the said witness. And I certify, that the said deposition is taken to be used in the suit aforesaid, and that the cause of taking the same is, that the said witness is about immediately to proceed to distant parts, more than one hundred miles from the place of trial of said suit.

Given under my hand and the seal of the corporation of Washington, the said 21st August, 1848.

[L. S.] W. W. SEATON, *Mayor.*

Attest: WM. J. McCORMICK, *Register.*

Thereupon, by consent of the parties, by their proctors aforesaid, the said cause is continued until the 26th instant.

And now at this day, to wit, the said twenty-sixth day of February, in the year of our Lord one thousand eight hundred and forty-nine, to which said day the said cause was continued, came again into the district court here, as well the said libellants by their proctor aforesaid, as the said respondent by his proctor aforesaid; and the said libellants, by

their proctor aforesaid, by consent of the court here being first had and obtained, filed in court here an amendment to their said libel, and a demurrer to the plea aforesaid of the said respondent, in the words and of the tenor following, to wit:

District court, District of Columbia.

Amendment to libel.

JUAN BAUTISTA JECKER and others, libellants, versus JOHN B. MONTGOMERY, respondent. } In admiralty.

The libellants pray to amend their libel, heretofore filed in this cause, by adding thereto:

1. Towards the end of the same, after the words, "and of their agents and attorneys," and before the words, "by reason of all which," the following words: "But that the said pretended captors, without bringing, sending, or causing to be brought or sent, said vessel and cargo, or either of them, or any portion or part of said cargo, within the limits of the United States, or any district thereof, or within the jurisdiction of any court of the United States having lawful authority or right to investigate, examine, and adjudicate upon the legality of said pretended capture; and without having instituted any proceedings in any court of the United States having such lawful jurisdiction or authority; and without any order, judgment, or decree of any such court, have, of their own accord, and against all law and right, sold and disposed of the ship Admittance and her cargo, which cargo was the lawful property of these libellants, and have tortuously and wrongfully parted with the possession of and power over the same, and have thus put it out of the power of said John B. Montgomery to proceed to any lawful adjudication upon the legality and validity of said capture; and has thereby made himself, the said respondent, a trespasser *ab initio*, independently of any lawful or probable cause for such original seizure."

2. In the next to the last sentence of the libel, after the word "compelled," and before the words "to restore," add these words, "to bring forthwith the said property of the libellants, being the cargo of the said ship Admittance, within the jurisdiction of this honorable court, or of some other court of the United States, and then and there, without further delay, to institute proceedings against said property, and to allege and prove some lawful or probable cause of seizure, and proceed to have the same passed upon and adjudicated by some court of the United States having full power, authority, and jurisdiction in the matters aforesaid; or in default thereof."

RICHARD S. COXE, *for Libellants.*

Demurrer to respondent's plea.

And as to so much of said answer as sets forth the proceedings of a certain pretended United States court of admiralty for California, and

by which court a decree of condemnation had been passed, and pleads the said decree and proceeding in bar of this libel; these libellants aver and say, that by any matter or thing thus pleaded in bar they ought not to be precluded from maintaining this their libel against said respondent, and having the relief therein prayed; because, they say, that they are advised, and therefore insist, before this honorable court, that the matters and things therein alleged, if true, which they by no means admit, are wholly insufficient in law to bar these libellants in this action, or to preclude them from the relief they seek; and for causes of demurrer to said plea these libellants aver and say:

1. That no such court of admiralty for California ever existed, or was authorized or organized under the Constitution and laws of the United States, as that before which said proceedings as pleaded could be had.

2. That the judge, or person who acted as said judge, in said pretended United States court of admiralty for California, was never legally constituted judge as aforesaid, or could legally entertain jurisdiction or exercise authority in the premises.

3. That said pretended United States court of admiralty for California had no lawful authority or jurisdiction in the premises.

4. That all said proceedings and decree, so pleaded in bar, were and are coram non judice, and utterly repugnant to the Constitution and laws of the United States, and null and void.

Therefore, and for other good causes of demurrer in said plea, and in the matters and things therein and thereby pleaded, the same ought to be overruled and held for naught.

COXE, *for Libellants.*

Whereupon, with the consent of the said parties, by their proctors aforesaid, and by order of the court here thereon, the said cause is continued until Tuesday, the 24th April, instant.

At which said Tuesday, the 24th day of April, in the year of our Lord one thousand eight hundred and forty-nine, came again into court here, as well the said libellants, by their proctor aforesaid, as the said respondent, by his proctor aforesaid, and the said libellants, by their proctor aforesaid, by leave of the court here first had and obtained, filed in court here a demurrer to part of the answer aforesaid of the said respondent, in the words and of the tenor following, to wit:

Demurrer to part of respondent's answer.

JUAN BAUTISTA JECKER and others, libellants,
vs.
JOHN B. MONTGOMERY, respondent.

In the district court of the District of Columbia.

The libellant, as to much of the answer of the respondent, filed in this case, as alleges and sets up any act or thing on the part of the captain and crew of the said ship Admittance, or any of omission or commis-

sion of any sort or kind, as a justification of the said seizure of said ship or her cargo as lawful prize of war, or which might amount to probable cause of said seizure, demurs to the same; and for cause of demurrer avers and says, that this court in this cause has no rightful jurisdiction or authority to examine or adjudicate upon any question of prize, or of probable cause of capture as prize of war, but that the same belongs exclusively to the courts of the United States exercising prize jurisdiction, and having within its jurisdiction and control the property so seized or captured as prize, which this court has not, and in consequence of the tortuous and illegal acts of said respondent as alleged and set forth in said libel, cannot have.

Wherefore, and for other causes, these libellants do demur to so much of said answer as is above set forth.

COXE,
Advocate and proctor for libellants.

And the said libellants, by their proctor aforesaid, by leave of the court here first had and obtained, filed in court here the following order or direction, to wit:

April 24th, 1849.

SIR: Please set down this cause for hearing upon the libel, answer, plea, and demurrers.

COXE, *for Libellants.*

JNO. A. SMITH, esq.,
Clerk of the district court.

Cause set for hearing.

Which was by the court accordingly ordered, and the cause set down for hearing, and so forth, for Tuesday, the first day of May next; to which said day the said cause is, by consent of the said parties, by their proctors aforesaid, and by order of the court here, continued.

May, 1849.

At which mentioned first day of May, in the year of our Lord one thousand eight hundred and forty-nine, to which said day the said cause was continued, came again into the district court here, as well the said libellants, by their proctor aforesaid, as the said respondent, by his proctor aforesaid; and the said respondent, by his proctors, P. B. Key and Reverdy Johnson, esqrs., by leave of the court here first had and obtained, joins in the two demurrers aforesaid of the said libellants; and thereupon, by consent of the said parties, by their proctors aforesaid, and by order of the court here thereon, the said cause is continued until Wednesday, the 13th of June next.

June, 1849.

And now at this day, to wit, the said thirteenth day of June, in the year of our Lord one thousand eight hundred and forty-nine, came

again into the district court here, as well the said libellants, by their proctors aforesaid, as the said respondent, by his proctors aforesaid.

Decree.

And this cause having been duly set for hearing upon the libel, amended libel, answer, plea, and demurrers, and having been duly considered by the district court of the United States, for the District of Columbia, it is now, this thirteenth day of June, in the year one thousand eight hundred and forty-nine, pronounced, declared, and decreed, by the said court, that the said demurrers to the answer and plea aforesaid, filed by the respondent, be and the same are fully sustained, and the said plea and answer held for naught. And the said court, further proceeding to pass upon and adjudge said case, does decree, pronounce, and declare, that the said respondent do bring said property, the cargo of the said ship Admittance, within the jurisdiction of some district court of the United States, and institute proceedings against said cargo as prize of war, on or before the first day of July next, or that in default thereof the said libellants do recover against the said respondent, for the causes set forth in their said libels, the value of the said cargo so belonging to them, and taken by the said respondent; the amount of this decree to be ascertained and settled by the respective proctors of the parties, or in case they shall not agree on or before the first day of August next, then by order of the said court, and the sum then ascertained shall be inserted as part of this decree, nunc pro tunc.

This decree is pronounced and given by consent of the proctors of said parties as a pro forma decree.

By order of the court. W. CRANCH.

Whereupon, afterwards, to wit, on the third day of September, in the year eighteen hundred and forty-nine, the said parties, by their proctors aforesaid, filed in court here the following agreement, to wit:

Agreement of proctors as to value of cargo.

JUAN BAUTISTA JECKER and others, libellants,
vs.
JOHN B. MONTGOMERY, respondent.

District court, U. States, District of Columbia, in admiralty.

It is agreed, by and between the parties in this case, by their respective counsel, that the value of the cargo of the ship Admittance, belonging to and claimed by the libellants in this suit, was, at the time and place of her capture by respondent, worth the sum of one hundred thousand dollars, and that the decree heretofore entered be filled up with that sum.

RICH'D S. COXE,
For libellants.
REVERDY JOHNSON,
For defendant.

August 31, 1849.

Appeal to circuit court.

An appeal is prayed by the respondent and granted by consent, and every thing to be done is considered done, in order that the said cause may be removed to the next circuit court by like consent.

Test: JNO. A. SMITH, *Clerk.*

DISTRICT OF COLUMBIA,
Washington county, to wit.

I, John A. Smith, clerk of the district court of the United States, for the District of Columbia, hereby certify, that the aforegoing is a true and perfect transcript of all the proceedings had in the said court in the said cause of Juan Bautista Jecker and al. against John B. Montgomery, as appears from the minutes of the proceedings of the said court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said district court, this 29th day of October, 1849.

[Seal of the D. C. of the U. S., for D. C.]

JNO. A. SMITH, *Clerk.*

Amended answer.

And the said libellants, at the same time also, appear[ed] in court here by their proctor aforesaid; whereupon the said respondent by his proctors aforesaid, with the consent of the said libellants by their proctor aforesaid, and by leave of the court here, filed his amended answer in the said cause in form following, to wit:

JEAN BAUTISTA JECKER and others,
vs.
JOHN B. MONTGOMERY.

In Admiralty.

The respondent prays to amend his answer heretofore filed in this cause, by adding thereto before the last sentence of the answer, and after the words "in bar of this libel," and before the words "wherefore this respondent," the following words:

"And this respondent avers, that Jecker, Torre & Co., the libellants in this case, were, in the month of October, in the year one thousand eight hundred and forty-six, and for some time before that date, and up to the time of the seizure of the said ship Admittance, merchants resident and domiciliated in Mexico, conducting a commercial establishment in the said republic under the firm of Jecker, Torre & Co. And, further, that Messrs. Rubro, Brothers & Co., were also, during the time aforesaid, resident merchants in the said republic of Mexico, conducting therein a commercial establishment.

And this respondent further avers, that no bill of lading representing the cargo, or a portion of the cargo, of the said ship Admittance, was ever endorsed or transferred to the said libellants, except one bill of lading representing a portion only of said cargo, to wit, two thousand seven

hundred and seven small bales of cotton, which bill of lading the said libellants have endorsed and transferred to Messrs. Baron, Forbes & Co., of Tepic, Mexico."

REVERDY JOHNSON,
P. B. KEY,
Respondent's counsel.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their proctors aforesaid, and by order of the court here thereon, the said cause is continued until the fourth Monday of March next.

March term, 1850.

And now, at this day, to wit, the said fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty, to which said day the said cause was continued, come again into the circuit court here, as well the said libellants by their proctor aforesaid, as the said respondent by his proctors aforesaid: whereupon the court passed the following decree in the premises, to wit:

Decree.

This cause coming on to be heard, and having been argued by counsel, and considered by the court, it is ordered, adjudged, and decreed, that so much of the decree of the district court as overrules the plea of the respondent which sets up as a bar to this action the proceedings in the court at Monterey, condemning the cargo of the ship Admittance, be, and the same is affirmed: and that so much of said decree as sustains the demurrer by the libellants to the answer of respondent, averring sufficient or probable cause for the seizure of the said cargo, be, and the same is hereby reversed, with liberty to libellants to withdraw said demurrer, and reply to said answer; and said libellants having declined to withdraw said demurrer and reply, it is further ordered and adjudged, that said demurrer is bad, and final judgment thereon awarded against said libellants with costs.

Test: JNO. A. SMITH, *Clerk.*

Appeal prayed to Supreme Court, U. S.

Thereupon the said libellants, by their proctor aforesaid, prayed an appeal from the judgment and decree of the court aforesaid, to the Supreme Court of the United States, and to him the same is granted.

Whereupon the said libellants, by their proctor aforesaid, file in court here a certain writing obligatory, commonly called an appeal bond, in the words following, to wit:

Appeal bond.

Know all men by these presents, that we, William S. Parrott and Thomas Fillebrown, of Washington city, D. C., are held and firmly bound unto John B. Montgomery in the full and just sum of two hun-

dred dollars, current money of the United States, to be paid to the said John B. Montgomery, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, [and] firmly, by these presents. Sealed with our seals, and dated this eighteenth day of September, 1850.

Whereas lately, at a circuit court of the district of Columbia, sitting for Washington county, in a case wherein John B. Montgomery was appellant, and Bautista Jecker, Luis Jecker, Tomas de la Torre, Geidero de la Torre, and Jose E. Fernandez, were appellees, brought from the district court of the United States, for the district of Columbia, a decree was rendered in the said circuit court against the said appellees, and they having entered an appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such, that if the said Bautista Jecker and others shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligations to be null and void; otherwise to be and remain in full force and virtue in law.

W. S. PARROTT, [SEAL.]
T. FILLEBROWN. [SEAL.]

Sealed and delivered in presence of—
H. J. SCHIENER.

Which bond being read and heard, and the securities in the said bond being by the court here approved, it is therefore ordered by the said court, that the record and proceedings aforesaid, with all things thereto relating, be transmitted to the Supreme Court of the United States; and the same are transmitted to the said court accordingly.

In testimony whereof I, John A. Smith, clerk of the circuit court of the district of Columbia, for the county of Washington, have [SEAL.] hereunto subscribed my name and affixed the seal of said court, this 20th day of September, 1850.

JNO. A. SMITH, *Clerk*.

hundred and seven small bales of cotton, which bill of lading the said libellants have endorsed and transferred to Messrs. Baron, Forbes & Co., of Tepic, Mexico."

REVERDY JOHNSON,
P. B. KEY,
Respondent's counsel.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their proctors aforesaid, and by order of the court here thereon, the said cause is continued until the fourth Monday of March next.

March term, 1850.

And now, at this day, to wit, the said fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty, to which said day the said cause was continued, come again into the circuit court here, as well the said libellants by their proctor aforesaid, as the said respondent by his proctors aforesaid: whereupon the court passed the following decree in the premises, to wit:

Decree.

This cause coming on to be heard, and having been argued by counsel, and considered by the court, it is ordered, adjudged, and decreed, that so much of the decree of the district court as overrules the plea of the respondent which sets up as a bar to this action the proceedings in the court at Monterey, condemning the cargo of the ship Admittance, be, and the same is affirmed: and that so much of said decree as sustains the demurrer by the libellants to the answer of respondent, averring sufficient or probable cause for the seizure of the said cargo, be, and the same is hereby reversed, with liberty to libellants to withdraw said demurrer, and reply to said answer; and said libellants having declined to withdraw said demurrer and reply, it is further ordered and adjudged, that said demurrer is bad, and final judgment thereon awarded against said libellants with costs.

Test: JNO. A. SMITH, *Clerk.*

Appeal prayed to Supreme Court, U. S.

Thereupon the said libellants, by their proctor aforesaid, prayed an appeal from the judgment and decree of the court aforesaid, to the Supreme Court of the United States, and to him the same is granted.

Whereupon the said libellants, by their proctor aforesaid, file in court here a certain writing obligatory, commonly called an appeal bond, in the words following, to wit:

Appeal bond.

Know all men by these presents, that we, William S. Parrott and Thomas Fillebrown, of Washington city, D. C., are held and firmly bound unto John B. Montgomery in the full and just sum of two hun-

dred dollars, current money of the United States, to be paid to the said John B. Montgomery, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, [and] firmly, by these presents. Sealed with our seals, and dated this eighteenth day of September, 1850.

Whereas lately, at a circuit court of the district of Columbia, sitting for Washington county, in a case wherein John B. Montgomery was appellant, and Bautista Jecker, Luis Jecker, Tomas de la Torre, Geidero de la Torre, and Jose E. Fernandez, were appellees, brought from the district court of the United States, for the district of Columbia, a decree was rendered in the said circuit court against the said appellees, and they having entered an appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such, that if the said Bautista Jecker and others shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligations to be null and void; otherwise to be and remain in full force and virtue in law.

W. S. PARROTT, [SEAL.]
T. FILLEBROWN. [SEAL.]

Sealed and delivered in presence of—
H. J. SCHIENER.

Which bond being read and heard, and the securities in the said bond being by the court here approved, it is therefore ordered by the said court, that the record and proceedings aforesaid, with all things thereto relating, be transmitted to the Supreme Court of the United States; and the same are transmitted to the said court accordingly.

In testimony whereof I, John A. Smith, clerk of the circuit court of the district of Columbia, for the county of Washington, have [SEAL.] hereunto subscribed my name and affixed the seal of said court, this 20th day of September, 1850.

JNO. A. SMITH, *Clerk.*